

E-Filed 7/2/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TERRY ALEXANDER,

No. C 12-1175 RS (PR)

Plaintiff,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

v.

SALINAS VALLEY STATE PRISON,

Defendants.

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*

No. C 12-1175 RS (PR)
ORDER DISMISSING COMPLAINT

1 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*
2 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

3 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
4 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
5 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
6 plausibility when the plaintiff pleads factual content that allows the court to draw the
7 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
8 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions
9 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from
10 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).
11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
12 that a right secured by the Constitution or laws of the United States was violated, and (2)
13 that the alleged violation was committed by a person acting under the color of state law. *See*
14 *West v. Atkins*, 487 U.S. 42, 48 (1988).

15 **B. Legal Claims**

16 Plaintiff alleges that (1) an inmate punched him; (2) prison officials refused to
17 investigate this incident; (2) he, who is in a wheelchair, was put in “the hole” without a
18 proper bed in violation of the Americans With Disabilities Act; (3) he is not allowed
19 sufficient exercise or access to a shower; and (4) he is being retaliated against. Plaintiff’s
20 allegations do not contain sufficient factual matter to state claims under § 1983. Claim 1 is
21 DISMISSED without leave to amend. Actions by inmates do not give rise to claims under
22 § 1983. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The remaining claims are
23 DISMISSED with leave to amend. Plaintiff must name specific persons and describe those
24 persons exact actions in order to allege claims under § 1983.

25 Accordingly, the complaint is DISMISSED with leave to amend. Plaintiff shall file
26 an amended complaint within 30 days from the date this order is filed. The amended
27 complaint must address all the deficiencies listed above, and include the caption and civil
28

1 case number used in this order (12-1175 RS (PR)) and the words FIRST AMENDED
2 COMPLAINT on the first page. Because an amended complaint completely replaces the
3 previous complaints, plaintiff must include in his first amended complaint all the claims he
4 wishes to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d
5 1258, 1262 (9th Cir. 1992). Any claims not raised in the first amended complaint will be
6 deemed waived. Plaintiff may *not* incorporate material from the prior complaint by
7 reference. Failure to file an amended complaint in accordance with this order will result in
8 dismissal of this action without further notice to plaintiff.

9 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
10 informed of any change of address by filing a separate paper with the clerk headed "Notice of
11 Change of Address." He must comply with the Court's orders in a timely fashion or ask for
12 an extension of time to do so. Failure to comply may result in the dismissal of this
13 action pursuant to Federal Rule of Civil Procedure 41(b).

14 Because the complaint is being dismissed with leave to amend, plaintiff's motion for
15 an emergency transfer and a shower (Docket No. 5) and his motion for relief (Docket No. 6)
16 are DENIED without prejudice. Plaintiff may refile such motions with his amended
17 complaint. The Clerk shall terminate Docket Nos. 5 and 6.

18 **IT IS SO ORDERED.**

19 DATED: July 2, 2012

20 
21 RICHARD SEEBORG
22 United States District Judge
23
24
25
26
27
28